

LABOUR DEPARTMENT
The 21st October, 1994

No 14/13/87-6Lab./702.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/S T.C. Haryana, Chandigarh versus Sukhdev Singh :—

IN THE COURT OF SHRI S. R. BANSAL (ADDL. DISTT. & SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 100 of 1988

between

WORKMAN SHRI SUKHDEV SINGH CONDUCTOR, S/O SHRI SAWARN SINGH, C/O TRADE UNION COUNCIL PATIALA (PUNJAB)

and

THE MANAGEMENT OF THE TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH (I) GENERAL MANAGER, HARYANA ROADWAYS, AMBALA.

Present :

WR. Shri Tejinder Singh.

MR. Shri Balindar Singh, ADA.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (hereinafter called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Sukhdev Singh and the management (i) Transport Commissioner, Haryana, Chandigarh (ii) General Manager, Haryana Roadways, Ambala to this Court for adjudication,—*vide* Haryana Government notification bearing No. 12490—95, dated 29th March, 1988 :—

Whether the termination of services of Shri Sukhdev Singh is valid & justified ? If not, so, to what relief is he entitled ?

The workman was appointed as Conductor in Haryana Roadways, Ambala in the year 1969-70. His services were terminated on 10th June, 1986. He served the demand notice dated 5th October, 1987 under section 2(A) of the Act. The Labour Officer-cum-Counselling Officer took out the conciliation proceedings. The same however did not yield any result necessitating the making of the present reference by the appropriate Government.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 9th August, 1988. It was alleged that the termination of services of the workman is illegal and unjustified and therefore the workman is entitled to reinstatement with continuity of services and back paid wages.

The management pleaded that the services of the workman were terminated,—*vide* order dated 10th June, 1986 after holding proper enquiry under the rules. He was served with charge-sheet along with summary of allegations. Workman submitted reply to the charge-sheet and he requested for holding of departmental enquiry which was ordered to be conducted. The Enquiry officer held the charges proved which was considered by the Punishment Authority and after giving a show cause notice and opportunity of personal hearing to the workman his services were terminated in accordance with law and therefore the workman is not entitled to any relief.

Workman submitted his replication dated 11th November, 1988 controverting the allegations of the management. On the pleadings of the parties, the following issues were framed by the then Lt. Presiding Officer, Labour Court, Ambala.

1. Whether the impugned termination of services of the workman is invalid ? OPW.
2. Relief.

The parties led evidence.

I have heard the Ld. representatives of the parties. My issue wise findings are as under :—

Issue No 1 :

Management produced MW-1 Shri Ramesh Chander, Steno. MW-2 Shri Madan Lal Sharma retired Traffic Manager who conducted the enquiry and is also tendered into evidence documents Ex-M-1 to Ex. M-15. In rebuttal the workman produced WW-1 Shri Gurdev Singh who stated that on 27th June, 1985 when he was travelling the bus of Haryana Roadways the workman asked him for ticket where upon he told him that he was the member of the staff. He further stated that he was accompanied by his daughter at that time. WW-2 is Shri Sukhdev Singh workman himself who stated that the report of the preliminary enquiry was not given to him. Similarly the report of the enquiry proceedings was also not supplied to him and that they were not produced during the enquiry proceedings nor he was given opportunity to produce evidence in defence. He also stated that there was no presenting Officer in the enquiry.

As noticed above, the Enquiry Officer has appeared as MW-2 and proved all the documents on the file. He stated that,—vide Ex-M-6 he was appointed as Enquiry Officer and recorded the statement of Shri Bhagwan Singh, Inspector Ex-M-7 and Ex-M-8. He also stated that the statement of the workman Ex-M-9 was also recorded, and that the workman had stated that he did not want to produce any witness in defence." The Enquiry Officer submitted his enquiry report Ex-M-10. MW-1 Shri Ramesh Chander, Steno has proved that Shri Bhagwan Singh, Inspector submitted his report Ex-M-1 and Shri Sukhdev Singh workman was placed under suspension,—vide Ex-M-2. He also proved that charge-sheet Ex-M-3 along with statement of allegation Ex-M-4 was served upon the workman and Ex-M-5 is the reply of the workman and Ex-M-6 is the copy of the order,—vide which the Traffic Manager was appointed as Enquiry Officer. He also stated that show cause notice Ex-M-11 was issued to the workman and the workman submitted his reply Ex-M-12. He then stated that,—vide Ex-M-3 opportunity of personal hearing was granted to the workman and ultimately services of the workman were terminated,—vide order Ex-M-14. Ex-M-15 is the copy of the order of the State Transport Commissioner, Haryana,—vide which the appeal of the workman was rejected. It is thus quite evident that valid domestic enquiry was conducted against the workman and his services were terminated by the Competent Authority after following the procedure laid down by law. No doubt WW-1 Shri Gurdev Singh has stated that he was travelling the bus and that bus conductor did not issue him tickets as he told him that he is member of the staff but his name was not disclosed by the workman either during the enquiry proceedings or in the demand notice served. Similarly his name was not disclosed in the reply to the charge-sheet. The witness has admitted that his statement recorded by the Enquiry Officer. He further admitted that opportunity of personal hearing was granted to him. Ex-M-9 shows that the workman himself admitted that he had not issued tickets to 2/3 passengers. He also admitted that he had wrongly punched the certain tickets. It is thus quite evident that proper enquiry was conducted and the charges stood proved against the workman. The workman never demanded the report of preliminary enquiry. The Enquiry Officer never acted as the Prosecuting Officer. The record of the statement Ex-M-8 shows that only one question was asked by the Enquiry Officer to Shri Bhagwan Singh, Inspector. I am thus, fully convinced that termination of the services of the workman took place in pursuance of valid domestic enquiry and it appears that termination of his services is perfectly in order. This court is not sit as a court of appeal over the findings of the Enquiry Officer. The Ld. representative of the workman has cited State of Haryana versus Mohan Singh (2) SLR page 116 and argued that non recording the statements of the passengers has rendered termination illegal. I have gone through the facts of this case, it is not a case under Industrial Disputes Act. In this case the delinquent official had challenged his termination by way of Civil Suit before the Senior Subordinate Judge, Chandigarh. Obviously the ratio of this authority cannot be pressed into service to hold that there is any non compliance on the part of the Enquiry Officer or any infirmity in conducting of the enquiry. The finding on this issue is, therefore, returned in favour of the management and against the workman.

Relief:

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S. R. BANSAL,

Dated the 2nd September, 1994.

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endst. No. 1573, dated the 21st September, 1994

Forwarded (four copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S. R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6Lab./704.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon in respect of the dispute between the workman and the management of The Chief Administrator, Haryana State Agriculture Marketing Board, Panchkula *versus* Kishan Dev.

IN THE COURT OF MRS. ANITA CHAUDHARY, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, GURGAON

Reference No. 239 of 1988

between

KISHAN DEV CHOWKIDAR C/O SHRI MAHAVIR TYAGI, ORGANISOR, INTUC,
DELHI ROAD, GURGAON

and

THE MANAGEMENT OF M/S (1) CHIEF ADMINISTRATOR, HARYANA STATE AGRICULTURAL MARKETING BOARD, 6/6 PANCHKULA, DISTRICT AMBALA. (2) ADMINISTRATOR, MARKET COMMITTEE, GURGAON

Present :

Shri Mahavir Tyagi, for the workman.

Shri S. K. Yadav, for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between the parties mentioned above, to this Court for adjudication.—*vide* Haryana Government, Labour Department, Endorsement No. 6426-32, dated 15th February, 1988 :—

Whether termination of services of Shri Kishan Dev, Chowkidar is just and legal ? If not, to what relief is he entitled ?

2. The facts as borne out from claim statement are that the petitioner was employed as a Chowkidar on 25th May, 1986 on a monthly salary of Rs. 500 and his services were illegally terminated on 9th September, 1987. No charge-sheet was ever served upon the petitioner, nor any notice was given or compensation paid.

3. The management had filed its written statement and they took up the plea that the Market Committee was not an industry and the petitioner was not a workman and the petitioner was engaged on *ad hoc* basis as daily wager and was appointed as Chowkidar on 1st May, 1986 for a temporary period till the vacancy was filled through the Employment Exchange. It was pleaded that services were terminated on 9th September, 1987 and the petitioner had no right under the Act.

4. In the replication, contents of the written statement were controverted while those of the claim statement were reiterated.

5. On these pleadings, following issues were framed on 21st April, 1989 :—

(1) Whether the respondent is not an industry as defined in the Act ?

(2) Whether Shri Kishan Dev, is not a workman as defined in the Act ?

(3) Whether termination of services of Shri Kishan Dev Chowkidar is just and legal ? If not, to what relief is he entitled ?

6. I have heard authorised representatives of the parties and have gone through the evidence available on the file. My findings on the issues are as under :—

Issues No. 1 and 2 :

7. Both the issues were not pressed before me, therefore, these issues shall be taken as not pressed.

Issue No. 3 :

8. The management has examined Bala Ram, Mandi Supervisor, a ; MW1, who deposed that Kishan Dev was working as Chowkidar from 1st May, 1986 to 1st July, 1986, 5th August, 1986 to 22nd October, 1986, 25th October, 1986 to 28th February, 1987 and 5th March, 1987 to 9th September, 1987 and his wages were being paid on the muster rolls. It was stated that the muster roll had been destroyed. However, summary had been prepared and the name of the petitioner had been shown at serial number 3. It was also stated that the petitioner was drawing a salary of Rs 500 p.m. He also deposed that whenever the respondent had engaged any employee, resolution was passed, but copy was never given to the worker.

9. On the other hand, workman has stepped into the witness box as WW1. He deposed that he was working as a Chowkidar with the respondent from 2nd April, 1986 and his services were terminated on 9th September, 1987 without assigning any reason and the management did not give any notice or pay in lieu thereof and they had employed some other person. He added that he was not working anywhere since the date of his termination.

10. The management has placed on record list of the persons, who were retrenched by the Market Committee. It also shows the name of the petitioner at serial number 3. According to it, he was engaged as a Chowkidar on daily wages on 1st June, 1986 and he worked till 31st October, 1987. There are short breaks of one or two days and at one time gap of 15 days was also given. The days have been calculated and according to the respondent, working days comes to 497 days. Petitioner, however, has pleaded that he was working as Chowkidar since April, 1986, but that fact could not be proved on the record, nor the petitioner has been able to bring any record on the file and we have only his bare statement. Undoubtedly, the petitioner had worked for a period over 240 days. According to the management, the workman each time had been employed for a fixed term and with the end of the term he could not be said to have been retrenched within the meaning of the Act and there was no need to comply with the provisions contained in Section 25F of the Industrial Disputes Act, 1947.

11. There is no denying the fact that the workman in this case had been employed each time for a certain period. Whether his services were terminated on completion of work assigned or this device was employed to deprive him of the benefits which accrue to a person on account of his long service has been the subject matter of enquiry before various judicial forums. At times it has been found that this device is employed i. e. of giving employment for a particular period and again for identical period after a gap of about 5-6 days so as to disrupt the continuity of his service. The Courts after examining the facts of a particular case at times have held to be an unfair practice. The identical proposition came up for consideration before the Hon'ble High Court in case reported as Kapurthala Central Co-operative Bank Ltd. Kapurthala versus Presiding Officer, Labour Court, 1984 (2) Indian Law Reporter 333.

12. In this case, no departmental enquiry was held, nor any chargesheet was served, nor management has been able to bring any material on the file to show that the conduct and service of the workman unsatisfactory. No notice or compensation was even granted. Workman has worked for more than 240 days. Examined thus, I find that the termination of services of the petitioner is illegal and not justified. The petitioner is thus entitled to reinstatement with continuity of service and full back wages. Reference is answered accordingly.

ANITA CHAUDHARY,

The 16th September, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

Endorsement No. 1452, dated the 30th September, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh under section 15 of the Industrial Disputes Act, 1947.

ANITA CHAUDHARY,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Gurgaon.

The 24th October, 1994

No. 14/13/87-6 Lab./740.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s. Eng.-in-Chief, P.W.D., Public Health, Haryana, Chandigarh, *versus* Sajjan Singh.

BEOFRE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 532 of 90

Date of receipt : 25-7-89

Date of decision : 2-9-94

SHRI SAJJAN SINGH SON OF ISHWAR SINGH, VILLAGE SARUPGARH,
TEHSIL CHARKHI DADRI, DISTRICT BHIWANI

: *Applicant*

versus

1. ENGINEER-IN-CHIEF, P.W.D., PUBLIC HEALTH, HARYANA,
SECTOR 19, CHANDIGARH.
2. SUPERINTENDING ENGINEER, P.W.D., PUBLIC HEALTH,
BHIWANI.
3. EXECUTIVE ENGINEER, P.W.D., PUBLIC HEALTH,
DIVISION NO. 1, BHIWANI.

: *Respondent-Management*

Present :

Shri K. S. Boniwal, for the workman.
Shri Sita Ram, ADA, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Sajjan Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department, letter No. Bwn/127-89/29789-95, dated the 11th July, 1989 :—

Whether termination of services Shri Sajjan Singh is justified and in order ? If not, to what relief, is he entitled ?

2. According to workman, he was appointed as Helper on 15th September, 1987 and his services were terminated by the management on 20th October, 1988, without any reason, in violation of the provisions of the Act. He prayed for reinstatement with full back wages and other consequential benefits.

3. The management pleaded in its written statement that the petitioner was appointed on 15th September, 1987, as helper and he himself absented from duties after 31st October, 1988. He further alleged that the petitioner had worked for 236 days and therefore, he is not entitled to any relief under the provisions of the Act.

4. On the pleadings of the parties, the following issues were framed on 29th March, 1991 by my learned predecessor :—

1. As per terms of reference.
2. Whether the petitioner is not a workman.
3. Whether the respondent is not industry ?
4. Relief.

5. The petitioner led evidence in support of his claim, while the evidence of the management was closed,—vide order, dated 1st August, 1994. I have heard Shri K. S. Beniwal, Authorised Representative of the workman and Shri Sita Ram, ADA, on behalf of the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1 :

6. Sajjan Singh, workman has stated as WW-1 that he was appointed on 15th September, 1987 and had worked upto 20th October, 1988, continuously and he had worked for more than 240 days. He further stated that no notice was given to him, nor any compensation was paid to him. He also stated that many juniors to him, namely, Dilbag, Satish and Rajender etc. were still working with the management.

7. The management failed to produce any evidence inspite of many opportunities having been granted to them, and the evidence of the management was closed,—vide order, dated 1st August, 1994.

8. Workman filed an application for production of record and the management was directed to produce the record, but the management had failed to produce any record and it was ordered,—vide order dated 1st August, 1994, that adverse inference shall be raised against the management. As the management has failed to produce any record, it is presumed that the petitioner had worked for more than 240 days in the preceding twelve months, and as admittedly provisions of Section 25-F of the Act, were not complied with, the termination of services of the petitioner is held illegal.

9. If it is presumed for the sake of arguments that the petitioner had not completed 240 days service, the management admitted in its written statement that the petitioner had worked for 236 days at the end of October, 1988 and it is not the case of the management that the work was not available with them at that time. Keeping the above circumstances in view, when the job was available, I am of the view that action of the management in preventing the workman from attending to his duties with effect from 1st November, 1988, was an “unfair labour practice”, and on this account, the retrenchment of the workman is illegal. In this connection, I place reliance on the Division Bench Authority of KAPURTHALA CENTRAL COOP. BANK LTD., KAPURTHALA *Vs.* PRESIDING OFFICER, LABOUR COURT, JALANDHAR & OTHERS, 1984-LAB. I. C.-974 and subsequent authorities of FEROZEPUR CENTRAL COOP. BANK LTD., *Vs.* LABOUR COURT, BHATINDA, FJR (VOL-67) 367 and GURDASPUR CENTRAL COOP. BANK LTD. *Vs.* PRESIDING OFFICER, LABOUR COURT, GURDASPUR & OTHERS, 1991 (1) RSJ-76. In the authority of KAPURTHALA CENTRAL COOP. BANK LTD. *Vs.* PRESIDING OFFICER, LABOUR COURT, JALANDHAR (SUPRA) the workman had completed 230 days job, while in the authority of FEROZEPUR CENTRAL COOP. BANK, LTD., *Vs.* LABOUR COURT, BHATINDA (SUPRA), the workman had put in 232 days in service. On the strength of these two authorities, it can be said, without any hesitation, that the termination of services of the workman, amounted to “unfair labour practice”, and the same was illegal. The workman is, thus, entitled to reinstatement, with continuity of service, and other benefits.

10. In view of the above discussion, the termination of services of the petitioner is held illegal. The petitioner is entitled to reinstatement with full back wages and other consequential benefits. The issue is answered accordingly, in favour of the workman.

Issue No. 2 & 3 :

11. Both these issues were not pressed by the Authorised Representative of the management and these issues were conceded to by him during arguments. These issues are, therefore, decided against the management.

Issue No. 4—Relief :

12. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set aside. The petitioner is reinstated in the same post forthwith,

with full back wages and benefit of continuity of service and other consequential benefit. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

The 2nd September, 1994.

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

Endorsement No. 2075, dated the 9th September, 1994,

A copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court, Hisar.

No. 14/13/87-6Lab./741.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Engineer-in-Chief P.W.D., Public Health, Haryana, Chandigarh *versus* Ved Parkash.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Date of receipt : 17-10-1989

Reference No. 606 of 90

Date of decision : 3-10-1994

SHRI VED PARKASH S/O CHANDER SINGH, C/O MAZDOOR EKTA UNION, HISAR

... *Applicant.*

versus

1. ENGG. IN-CHIEF, P.W.D., PUBLIC HEALTH, HARYANA, CHANDIGARH

2. EXECUTIVE ENGINEER, P.W.D., PUB. HEALTH, HANSI.

... *Respondent/Management*

Present :

Shri T. C. Gupta, for the workman.

Shri Sita Ram, ADA and D.C. Jain for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Ved Parkash and the above mentioned management for adjudication to this Court,—*vide* Labour Deptt. Letter No. Hsr/168-89/42478-84, dated 6th October, 1989 :—

Whether termination of services of Ved Parkash is justified and in order ? If not, to what relief is he entitled ?

2. The workman had pleaded that he worked as Beldar in Public Health Department, in three spells from 17th August, 1984 to 20th October, 1984, 11th March 1985 to 13th July, 1985 and then from 1st March, 1988 to 1st March, 1989. He further pleaded that he was removed from service on 1st March, 1989 in violation of the provisions of Section 25-F of the Act. He also pleaded that persons juniors to him were retained in service and that the termination of his services was bad on account of non-compliance of provisions of Section 25-G of the Act. He, therefore, prayed for his reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, pleaded that Ved Parkash was appointed on daily wages on muster rolls on the rates fixed by Deputy Commissioner from time to time and that no appointment letter was issued to him. It was, therefore, stated that no termination order was ever issued and that he was engaged on daily wages as and when required. The management further pleaded that the workman never worked continuously for 240 days in any calendar year and that provisions of the Act were not attracted in this case. It was also stated that Public Health Department was not an 'industry' as defined in the Act.

4. On the pleadings of the parties, the following issues were framed on 18th March, 1991 by my learned predecessor :—

1. As per terms of reference.
2. Whether the respondent is not industry ?
3. Relief.

5. The parties led evidence in support of their arrival claims. I have heard Shri T.C. Gupta, A.R. of the workman and Shri Sita Ram, A.D.A. and Shri D.C. Jain, A.R.s of the management and have gone through the casfile. My findings on the above issues are as under :—

Issue No. 1.

6. Ved Parkash has appeared as W-1 and has deposed that he worked as Peasant under the management from 11th March, 1985 to 13th July, 1985 and then from 16th October, 1985 to 23rd February, 1986 and he adduced in evidence copy of certificate as Ex. W-1. According to him, no notice was issued to him before terminating his services. In cross-examination, he admitted that he was being paid at D.C. rates.

7. On behalf of the management, Ram Sarup, S.D.E. was examined as MW-1 and he deposed that the workman joined on 18th July, 1984 and he left the job on 20th October, 1984. He further added that the workman again joined on 11th March, 1985 and worked as such upto 13th July, 1985 and thereafter he left the job and again joined on 13th November, 1988. He further added that the workman left the job on 28th February, 1989 and thereafter he never reported for duty. He admitted in cross-examination that the workman had also worked for 119 days during the period from 16th October, 1985 to 23rd February, 1986 except the days showing Ex. W-2 against the relevant period.

8. When the statement made by Ved Parkash on oath is scrutinized with the three spells given in the demand notice, it would be seen that both are at variance with each other, because in the demand notice, the workman has claimed having worked in 1984 as also in the year 1988-89 but the workman is conspicuously silent about the same when he entered the witness box. It was, however, Ram Swarup, S.D.E., MW-1, who happened to depose that the workman had worked from 18th July, 1984 to 20th October, 1984 and then from 11th March, 1985 to 13th July, 1985 followed by the third spell of 13th November, 1988 to 28th February, 1989.

9. Be that as it may be, when we peruse Ex. W-2 in conjunction with the details given in the statement attached with the written statement, it would be seen that the workman has worked for 203 days from 3rd March, 1988 to 28th February, 1989. Obviously, the workman is not protected under section 25-F of the Act as he has not worked for 240 days during the preceding twelve calendar months.

10. Shri T.C. Gupta, A.R. of the workman pointed out that when the working days mentioned in Ex. W-1 are added to the working days 119 as admitted by Ram Sarup, MW-1 in his cross-examination, the workman would be proved to have worked for 239 days from 11th March, 1985 to 23rd February, 1986. However, the fact remains that there is no evidence what-so-ever to show as to why the workman remained absent after 23rd February, 1986 till 13th November, 1988 and the fact that the demand notice was raised by the workman on 11th March, 1989 shows that the workman had left the job himself on 23rd February, 1986. Admittedly, the workman kept silent for over two years continuously without raising any demand notice during this period and it is a clear pointer to his abandonment of the job at his own in February, 1986. The workman, therefore, can not take any advantage of the service rendered by him during 1985-86 in the wake of my findings that in the given circumstances, he will be deemed to have left the job at his own in February, 1986.

11. So far as the authority of Andhra Pradesh High Court reported as *Indian Air versus A. Philips, 1989-II, LLJ-86*, cited by A.R. of the workman is concerned, the facts in that case are distinguishable as there was a lockout in Indian Airlines after the workman had rendered service for more than 240 days and there was no plea raised by management about abandonment of job by the workman.

12. In the light of discussion above, I hold that the provisions of Section 25-F of the Act are not attracted in this case. Likewise the workman has also failed to prove the contravention of Section 25-G of the Act, because the workman had not uttered a word in this regard, nor any question on this point, was put to Ram Sarup, MW-1, in the cross examination. The termination of services of Ved Parkash is, therefore, held justified and proper and he is not entitled to any relief. The issue is answered accordingly.

Issue No. 2

13. This issue was not pressed by the AR of the management and was conceded to by him during arguments. This issue is, therefore, answered against the management.

Issue No. 3 -Relief.

14. In view of my findings on the above issues, the termination of services of the technician is held justified and in order and he is not entitled to any relief. The reference is answered accordingly, with no order as to costs.

The 3rd October, 1994

B. R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour
Court, Hisar.

Endsmt No. 2214 Dated 3rd October, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Govt. Haryana, Labour & Employment Deptt. Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court, Hisar.

No. 14/13/87-6Lab./744.— In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/S T.C. Haryana, Chandigarh *Versus* Manohar Lal.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 692 of 90.

Date of receipt : 30-1-89.

Date of decision : 3-10-94.

SHRI MANOHAR LAL, CONDUCTOR S/O FATEH SINGH, VILLAGE RAMPURA DHILLON, HAJIRA, DISTRICT SIRSA .. *Applicant.*

Versus

1. TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH.

2. GENERAL MANAGER, HARYANA ROADWAYS, SIRSA

.. *Respondent-Management*

Present :

Shri V.K. Bansal for the workman.

Shri R.K. Bawa, for the management.

AWARD (PART-II)

In exercise of the powers conferred by clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Manohar Lal and the above mentioned management for adjudication to this Court,— *vide* Labour Department letter No. Hsr/28-89/3496-3502, dated 23 January, 1989 :—

Whether termination of services of Manohar Lal is justified and in order ? If not, to what relief is he entitled ?

2. Manohar Lal, above mentioned workman, had been working as Conductor in Haryana Roadways, Sirsa since 17th May, 1981. His services were terminated on 10th July, 1983, after holding domestic enquiry. The workman pleaded that the said order of termination was *null and void* for the various reasons given in para-4 of the claim statement. It was *inter alia* stated that the enquiry conducted against him was not held according to law and principles of natural justice. He, therefore, prayed for reinstatement with full back wages and other consequential benefits.

3. The management, in its written statement, stated that the services of the workman were terminated after holding fair and proper enquiry and after complying with the provisions under the rules and that termination order was justified. It was also stated that the applicant did not join the enquiry despite repeated opportunities having been given to him.

4. On the pleadings of the parties, the following issues were framed on 18th January, 1990 by the then Presiding Officer, Labour Court, Rohtak :—

- (1) Whether the domestic enquiry held by the management is fair and proper ?
- (2) As per terms of reference.

5. Issue No. 1, regarding domestic enquiry was treated as preliminary issue and,—*vide* award (Part-I) dated 7th September, 1993, it was held by this Court that the enquiry conducted in this case was not just and fair. The management was then afforded opportunity to lead evidence on merits.

6. The management had now examined Roshan Lal, Duty Clerk, Haryana Roadways, Sirsa as MW-1 and in rebuttal, Manohar Lal has appeared as WW-1 on 18th January, 1994.

7. I have heard Shri V. K. Bansal, A.R. of the workman and Shri R.K. Bawa, ADA, on behalf of the management and have gone through the case file. My findings on issue No. 2 are as under :—

Issue No. 2 :

8. In order to prove misconduct of the workman, the management produced Roshan Lal, Duty Clerk on 19th October, 1993 and he deposed as MW-1 that on 29th June, 1983, when he was posted in local flying squad, he inspected bus No. 9395 in the company of Gurdit Singh, Inspector and it was found that the workman, who was Conductor on that bus, had collected Rs. 14.10 from 11 passengers and had issued them old tickets. He further clarified that out of these 11 passengers, 4 passengers were found travelling from Chopta to Gursiana, 4 passengers from Chopta to Rampura and 3 passengers from Chopta to Hanjira. He further claimed that as per the way bill, the conductor has sold these tickets in the morning on that date. He further claimed that old used tickets to the tune of Rs. 44.40 were recovered from the conductor. He testified the report Ex. M-1 given to the department in this connection.

9. Manohar Lal, in his statement, has simply denied having issued old tickets to any passenger, though he admitted that his bus was checked on 29th June, 1983.

10. The first contention raised by Shri V.K. Bansal, A.R. of the workman is that General Manager, Haryana Roadways, Sirsa was not competent to pass dismissal order of the workman in the light of instructions dated 4th June, 1993 issued by Transport Commissioner, Haryana and that the impugned order was, thus, illegal. The contention of Shri Bansal can not be accepted, because the impugned order is not an order of dismissal, but is a an order of termination of services and admittedly the General Manager was competent to terminate the service of the workman. The fact that the impugned order was an order of termination, was also acknowledged before the Transport Commissioner, Haryana, Chandigarh, when the appeal was preferred by the workman and it was not pressed in the appeal that it was a case of dismissal. This contention of Shri V.K. Bansal, A.R. of the workman is, therefore, rejected.

11. So far as the sole statement of Roshan Lal, MW-1 is concerned, he has supported the case of the management on all material details. There is no allegation of enmity against him and there is no reason as to why his testimony should not be accepted. The argument of Shri V.K. Bansal, A.R. of the workman that failure to examine the passengers, to whom the old tickets were allegedly issued, would raise doubt about the veracity of the testimony of Roshan Lal, which was liable to be rejected being hearsay evidence has to be repelled in view of the observations made by our own High Court in the authority reported as *Kirpal Singh versus Presiding Officer Labour Court U.T. Chandigarh, 1993(3) RSJ-328*.

12. In the light of discussion above and relying upon the statement of Roshan Lal, MW-1, I hold that the applicant has embezzled a sum of Rs. 14.40 and that the management was justified in terminating the services of the workman and he is not entitled to reinstatement.

13. The services of the workman were terminated, *vide* order dated 10th July, 1985. However, the domestic enquiry conducted by the management had already been held to be bad and illegal and as the guilt of the workman has been proved before this Court for the first time by leading independent evidence by the management, the workman is entitled to wages from 10th July, 1985 till today i.e. the date of this award. In this connection, I am supported by the observations made by Hon'ble Supreme Court in the authority reported as *Gujrat Steel Tubes Ltd, versus Gujrat Steel Tubes Mazdoor Sabha, AIR 1980-SC-1896*. Except the back wages, as stated above, the workman is not entitled to any other relief. The management is directed to pay the amount of back wages for the period from 10th July, 1985 to the date of this award i.e. 3rd October, 1994, within a period of three months from today failing which, the workman shall be entitled to interest at the rate of 12% per annum from the date of this award to the date of actual payment. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

Dated, the 3rd October, 1994

Presiding Off.Off.,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2198, dated 3rd October, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner & Secretary to Government, Haryana, Labour & Employment Department Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13-87-6Lab./745.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/S Director, Social Welfare Department, Haryana, Chandigarh *versus* Partap Singh.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 565 of 90

Date of receipt : 28-8-89.

Date of decision : 3-10-94.

SHRI PARTAP SINGH DECEASED THROUGH SMT. BHAGWANI, WIDO (IMPLEADED L.R., *vide* ORDER DATED 7TH MAY, 1991), VPO MILAKPUR, TEHSIL HANSI, DISTRICT, HISAR
... Applicant.

versus

1. DIRECTOR, SOCIAL WELFARE DEPARTMENT HARYANA, CHANDIGARH.

2. CHILD DEVELOPMENT PROJECT OFFICER, CHILD DEVELOPMENT PROJECT, DABWALI (SIRSA) .. Respondent Management

For part :

Shri T.C. Gupta, for the workman.

Shri Sitaram ADA, for management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Partap Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Hsr/206-89/36940—46, dated 25th August, 1989 :—

Whether termination of services of Partap Singh is justified and in order ? If not, to what relief is he entitled ?

2. According to Partap Singh, now deceased, he was employed as a peon by the management on 22nd July, 1986 and he worked as such upto 4th April, 1989, on which date he was relieved from service without issuing him any notice and without paying him any retrenchment compensation. The workman had, therefore, pleaded that the management had contravened the provisions of Section 25-F of the Act. He therefore, prayed reinstatement with full back wages and consequential benefits.

3. During the pendency of this case, Partap Singh died on 24th September, 1990 and his widow Smt. Bhagwani was impleaded as his Legal Representative,—*vide* order dated 7th May, 1991.

4. The management, in its written statement, while admitting the date of appointment of the deceased workman, as 22nd July, 1986 asserted that the deceased was appointed on probation for a period of two years, which could be extended by another year and according to the management, the work and conduct of the deceased was not satisfactory and an enquiry was held against him. The deceased is alleged to have tendered apology in writing but he failed to show any improvement, despite number of warnings given to him. The management further pleaded that the services of the workman were terminated as per conditions of his appointment and that he was removed from service during probation period. It was, therefore, stated that the provisions of the Act were not attracted in this case. Several preliminary objections were also raised, as they are reflected in the following issues framed on 22nd May 1990 by my learned predecessor :—

1. As per reference.
2. Whether the reference is bad on account of non-joinder of necessary parties ?
3. Whether the claim is not maintainable ?
4. Whether the workman has no *locus standi* ?
5. Whether this Court has no jurisdiction to decide the case ?
6. Whether the provisions of I.D. Act are not applicable to the facts of the present case ?
7. Relief.

5. The parties led evidence insupport of their rival claims. I have heard Shri T.C. Gupta, A.R. of the workman and Shri Sita Ram ADA for the management and have gone through the case file. My findings on the above issues are as under :—

Issue No. 1:

6. Smt. Bhagwani, widow of the deceased, appeared as WW-1 and she adduced in evidence the appointment letter of her deceased husband as Ex. W-1 and copy of termination order as Ex. W-2.

7. On behalf of the management, Smt. Adarsh, Programme Officer, appeared as MW-1. She stated that on the complaint of CIPO, the Director Social Welfare ordered enquiry against the deceased workman and that she conducted enquiry. She testified the copy of her enquiry report as Ex. M-2. Subsequently according to her despite the workman having tendered apology, he remained absent from duties on various occasions.

8. A perusal of appointment letter Ex. W-1 would show that the deceased was appointed on probation for a period of two years. The appointment letter is dated 22nd July, 1986 and two years period expired on 21st July, 1988. The enquiry report submitted by Smt. Adarsh, MW-1 is dated 24th August, 1988, as is evident from Ex. M-2 and it is also evident that charge-sheet, a copy of which is also Ex. M-3, was also served upon the deceased in 1988, though the exact date is not given on Ex. M-3. It was thereafter that the probation period was extended,—*vide* letter dated 30th January, 1989 (Ex. M-2) for another year, though the two years period had expired on 21st July, 1988. In the termination order also, it was specifically mentioned that the work and conduct of the deceased was

unsatisfactory. As already stated above, the charge-sheet under rule 7 of Punjab Civil Services (P & A) Rules was also issued to the workman. It, therefore, cannot be said that the services of the workman were terminated in accordance with the terms of appointment during probation period and the termination in this case attached a stigma on the workman, since an enquiry was held against him and a regular charge-sheet was also issued against him. Moreover, the extension of probation period for third year after a gap of more than six months, also can not be said to be *bona fide* and it appears that the period of probation was extended only after the receipt of enquiry report Ex. M-2 culminating in issuance of charge sheet Ex. M-3. It, therefore, cannot be said that the services of the deceased were terminated in accordance with terms of appointment, during probation period and as the termination was on account of enquiry against him, it attached stigma and obviously termination on account of misconduct could not be done except by holding regular enquiry. Evidently no regular enquiry was conducted in this case. The termination of services of the deceased is, therefore, held to be illegal.

9. Since Partap Singh, workman had died on 24th September, 1990, the relief of reinstatement cannot be granted in this case. The widow of the deceased would, however, be entitled to back wages for the period from 4th April, 1989, the date of termination, till 24th September, 1990, the date of death of the deceased workman, alongwith consequential benefits. The issue is answered accordingly.

Issues No. 2, 3, 4, 5 and 6 :

10. All these issues were not passed by the A.R. of the management and all these issues were conceded to by him. All these issues are, therefore, answered against the management.

Issue No. 7 Relief :

11. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set-aside. Since the workman had died, the widow, Smt. Bhagwan would be paid back wages from 4th April, 1989 to 24th September, 1990 alongwith consequential benefits within a period of three months from the date of this award, failing which she will be entitled to interest at the rate of 12% per annum from the date of this award till actual payment No. order is, however, made as to costs. The reference is answered accordingly.

B. R. VOHRA,

Dated, the 3rd October, 1994

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2196, dated 3rd October, 1994

A copy, with spare copy is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Department for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13/87-6Lab/754.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Y.M.C.A. Institute of Engineering, Faridabad *versus* General Secretary, Non-Teaching Karamchari Singh, Y.M.C.A., Faridabad.

IN THE COURT OF SH. U. B. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT-II, FARIDABAD

Reference No. 579/88

between

THE MANAGEMENT OF M/S Y. M. C. A. INSTITUTE OF ENGINEERING, ZAKIR
NAGAR, FARIDABAD

versus

THE WORKMEN NAMELY GENERAL SECRETARY, NON-TEACHING KARAMCHARI
SANGH, Y. M. C. A. INSTITUTE OF ENGINEERING, FARIDABAD

Present :

Shri R. P. Arya, Authorised Representative, for the workman,
Shri Pardeep Sharma, Authorised Representative, for the respondent.

AWARD

In exercise of the powers conferred by clause (d) of sub-section(i) of section 10 of the Industrial Disputes Act, 1947 (here in after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this Tribunal for adjudication,—*vide* Haryana Government, Endorsement No. 5805—10, dated the 9th February, 1987 :—

1. Whether the workmen who are not given the facility of leave on Saturday are entitled to it ? If so, to what effect ?
2. Whether the reversion of A. K. Choudhary and Gokul Chand was unjustified ? If so, to what relief, are they entitled ?
3. Whether the stoppage of increment of Hari Parsad Chowkidar on 11th January, 1985 is justified if-not, to what relief, is he entitled ?
2. Briefly stated the facts of the case are that Non-teaching Karamchari Sangh of the respondent/Institute served demand notice dated 19th March, 1986 under section 2(K) of the Act on the Director of the respondent/Institute containing several demands. On failure of the re-conciliation proceedings the Government of Haryana has made the present reference. In order to justify the demands it is stated in the demand notice that more than 70% of the employees of the establishment are having all Saturdays off and so the remaining staff is also entitled to the same. A. K. Choudhary and Gokul Chand have been illegally reverted from the post of the Accountant and Store Munshi respectively without their fault. Similarly the annual increment of Hari Parsad Chowkidar was withheld despite the fact that the charges levelled against him were not proved and so the order is liable to be set aside.
3. The management/respondent submitted written statement dated 2nd June, 1987 stating therein that the reference is bad in law as same has been made by the Government without applying its mind and the dispute is also not espoused by sufficient number of workers. With regard to the demands it is stated that the staff of the institute comprises of three categories of employees i. e. (i) teaching (ii) non-teaching and (iii) maintenance and estate services staff. The first two categories of staff are having all Saturdays off. The services of employees falling in the third category viz maintenance and estate services are extremely essential for the proper upkeep of the Institute and its estate and for the welfare of its employees including members of their families living within the precincts. The Institute has its hostels, residential buildings, dispensary, play grounds, lawns etc. and their maintenance shall be adversely effected in case maintenance and estate service staff does not work on all the Saturdays. As regard the case of reversion of A. K. Choudhary, it is submitted that he was reverted on the expiry of probation period due to unsatisfactory work. Moreover he was a member of the supervisor staff and could not be considered as the workmen as defined in section 2 (s) of the Act and so his case cannot be considered. In reply the allegation regarding reversion of Gokul Chand, it is submitted that he was given officiating promotion against the post held by K. K. Sarkar and was reverted on the reversion of K. K. Sarkar. Lastly it is mentioned that order of stoppage of annual increment of Hari Shankar Parsad, Chowkidar, is justified as it passed after issuing show-cause notice and considering his reply with regard to the allegations against him.
4. Rejoinder dated 21st July, 1987 was filed by the authorised representative of the union re-asserting the previous averments and denying the averments of the respondent/management of the Institute.
5. On the pleadings of the parties, the following issues were framed ;—
 - (1) As per reference.
 - (2) Whether the reference is bad as alleged ?
 - (3) Whether the reference has not been properly espoused ; if so, to what effect ?
6. Both the sides have led evidence.
7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :—

Issue No. 1 :

8. M. R. Gupta, Superintendent deposed that broadly the staff employed in their Institution comprised of two categories one teaching and the other non-teaching. In the non-teaching staff there is

a separate category of employees such as Watch and Ward staff, staff employed in the dispensary, gardener and estate maintenance staff including sweepers. This separate category of employees is given six holidays in a month i.e. 4 Sundays and 2 Saturdays. The remaining non-teaching staff is given 8 holidays in a month i.e. 4 Sundays and 4 Saturdays. The services of the estate maintenance staff such as sweepers, electricians and the staff employed in the dispensary are needed for the maintenance of the Institution. In case these employees are allowed holidays on each and every Saturday then all the persons connected with the Institution shall face lot of inconvenience and it shall spoil the entire systems.

9. On the other had, two witnesses have been examined from the side of the union. WW-1 Ram Singh, Meson, deposed that 12 mesons were employed in the Institution and they were being allowed holidays on two Saturdays. He further stated that some of the Mistries employed in Workshop were being given off on all the four Saturdays. In the end, he stated that one Puppi Helper used to work with him but he had now been transferred to Machine workshop and so he was now enjoying holidays on all the Saturdays. WW-2 Nathi helper deposed that Puppi helper used to enjoy holiday on two Saturdays till his transfer to the workshop. He further stated that Nanak Chand, Store Munshi employed in their section is getting holiday on two Saturdays whereas K. K. Sarkar another store-munshi is enjoying holidays all the Saturdays. In the end, he stated that they were being discriminating in this manner.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the respondent that the maintenance staff mentioned above constitutes a distinct category of employees keeping in view the essential nature of their duties. The staff employed on the posts falling in this category is separately appointed and is not inter charged or transferred except in the case of acute administrative contingency. It is not possible to allow sweepers and chowkidars to enjoy holidays on every Sunday and every Saturday. It is also not possible to close dispensary on every Saturday and Sunday. Similar is the position of the gardener and other maintenance staff. At present these persons are being given two Saturdays off in a month by rotation and so the demand made by the union is not justified.

11. Shri R. P. Arya, authorised representative of the union has urged that the Institute remain closed on all Saturdays and Sundays and MW-1 M. R. Gupta admitted this fact. The regular staff is being allowed two weekly off. There is no rule under which two different patterns can be set up for allowing weekly off. He has further stated that a meeting was convened by the Hon'ble Chief Minister, Haryana on 3rd February, 1982 and all Saturdays were given off on trial basis. The Chief Warden through his letter Ex. W-2 clearly stated that the trial was successful. Again on 9th March, 1982 and 4th June, 1982, two triparte meetings were held and in these meetings a committee comprising of Dy. Labour Commissioner, Faridabad, Registrar of respondent and General Secretary of the Non-teaching Karamchari Sangh were asked to submit report. The respondent participated in the meetings convened by the Deputy Labour Commissioner for some time but later on backed out. It amounts to violation of agreement. The action of respondents of not abiding by the agreement is thus, null and void and all the workmen are entitled to all Saturdays off from the back date i.e. 9th March, 1982. In the end, he urged that the action of the respondents of not allowing all the workmen employed in the Institution all Saturday off is discriminatory as stated by the two witnesses on oath and as such the demand is justified.

12. It is not disputed that electricians, mason, plumbers, carpenter, helpers, store munsi and S. S. Fitters employed in maintenance section, sweepers, chowkidars and gardeners employed in Estate Section, Librarian and library attendant employed in the library, Dispensary and dispensary attendant employed in the dispensary and carpenter and drivers are being given two Saturdays off by rotation. It is clear that the nature of duties of this staff is such that it is not be possible to allow all of them to enjoy holidays on every Saturday. The perusal of report regarding number of posts attached with Ex. W-1 clearly shows that there is only one post of each of the various categories such as mason, carpenter, store munsi S. S. Fitter, Assistant librarian and library attendant. It is thus, not at all possible to allow the persons posted on these posts to enjoy holiday on all the Saturdays.

13. The minutes of the meeting dated 9th March, 1982 relied upon by workmen have been placed before the court during the course of the arguments. The perusal of these minutes clearly shows that it was decided by the Committee that for the time being the present arrangement of giving two days off in a week to staff members who were required to work six days a week may continue till further orders. It was further desired by the Deputy Commissioner, Faridabad that the Deputy Labour Commissioner, Faridabad should study the implications including financial aspects in consultation with Registrar and General Secretary of Non-teaching Karamchari Sangh and give his findings to the Deputy Commissioner so that the matter could be re-considered by the appropriate authorised for a final decision. Similarly the minutes of the meeting held on 4th June, 1982 Ex. W-4 that was decided that the Deputy Labour Commissioner, Faridabad may call a meeting of the concerned persons for determining the financial implications for allowing two days off in a

week to staff members who work six days in a week. It is thus, clear from the minutes of the two meetings that the respondent management had never finally agreed to give all the Saturdays off to the staff mentioned above. There is thus, no violation of the agreements as alleged by the workman.

14. So far as the question of discrimination is concerned it is observed that WW-1 Ram Singh, aged 55 years, clearly admitted in his cross examination that an employee who is appointed in the Maintenance Department is retained in that department and is not transferred to any other department. He also confirmed that he had been in the maintenance department since the time of his appointment. WW-2 Nathi also admitted in his cross examination that he had been in the maintenance staff from the very beginning of his service carrier. This position shows that the staff appointed on these posts forms a distinct category as is the stand of respondent/management. The question of discrimination thus, does not arise.

15. It may also be added that information was sought by the respondent/management from the Executive Engineer, Public Health Department, Faridabad about the working days of Maintenance Field staff. It was reported by his—vide letter dated 15th June, 1994 that the said staff was working for six days in a week and was given one weekly rest. It was also stated that they were performing duties from 8 a.m. to 5 p.m. It is thus, clear that the respondent/management is not taking more work from the employees as compared to the Government employees of the same category.

16. It is thus, concluded that the workmen mentioned above are not entitled to enjoy holidays on evry Saturday.

17. With regard to the case of reversion of A. K. Choudhary from the post of Accountant to Cashier MW-1 M. R. Gupta stated that he was appointed as Accountant on probation for a period of 2 years as per appointment letter Ex. M-1. He was served with charge-sheet Ex. M-2. The explanation given by him was unsatisfactory. So he was given show cause notice dated 17th September, 1982 as to why he should not be reverted to his substantive post of Accountant he was then reverted through letter dated 5th January, 1983 Ex.M-4.

18. On the basis of aforesaid statement a two-fold submission has been made on behalf of the management. Firstly that A. K. Choudhary was employed in supervisory capacity and was not a workman and secondly that he was reverted during the period of probation on account of unsatisfactory work. Thus, the impugned order is legal and valid.

19. On the other hand, it has been contended on behalf nature of the workmen that it is clear that A. K. Choudhary was reverted by way of punishment casting a stigma. It was thus, necessary for the management to hold a domestic enquiry before passing the impugned order of reversion. Admittedly that this was not done and so the impugned action is illegal.

20. To support aforesaid plea, Sh. R. P. Ayra, authorised representative for the workman referred to the case between M. L. Kamra and New India Assurance Co. Ltd and another 1992 (65) FIR 188 in which the Hon'ble Supreme Court held that where the rules provide the procedure to be adopted in case of misconduct the passing of order of termination simplicitor, abandoning enquiry is illegal. He also referred to the case between Municipal Committee, Sumen and Presiding Officer, Labour Court, Patiala and another 1992 (65) FIR 916 in which it was held the termination of services of a probationer mentioning that he had been doing work in an irresponsible and indisciplined manner was not termination simplicitor.

21. The respondent has not led evidence to prove that Sh. A. K. Choudhary was resigned the duty of supervisory nature. It is matter of common experience and knowledge that an accountant does not perform the duties of supervisory nature. The first plea taken by the management is thus, not tenable.

22. There is no dispute that Sh. A. K. Choudhary was appointed on probation for a period of 2 years. It is also not disputed that he could be reverted on the substantive post of cashier on the basis of unsatisfactory work. In that situation the management as required to pass a simplicitor order to the effect that he was being reverted due to unsatisfactory work. In the instant case, the management passed a detailed order dated 5th January, 1983 referring to the explanation given by the A. K. Choudhary to the charge-sheet. The order is based on specific charges mentioned in the charge-sheet. This order was certainly passed by way of punishment and cast a stigma. This order could not be passed without holding of enquiry into the charges. The order is thus, illegal. Consequently, A. K. Choudhary is entitled to the benefit of re-promotion from the date of reversion upto the date.

23. With regard to the reversion of Gokul Chand, MW-1 M. R. Gupta deposed that he was given officiating promotion in the place of K. K. Sarkar, who had been further promoted. He was reverted on the reversion of K. K. Sarkar. He has also placed on record letters of promotion etc. Ex. M-5 to Ex. M-8.

24. On the basis of above statement it has been submitted on behalf of the management that it is clear from the perusal of letters dated 26th November, 1982 Ex. M-5 that K. K. Sarkar, Store Munshi was given officiating promotion as Clerk on the condition that he will have to qualify the typing test within a period of one year. It is clear from letter dated 2nd July, 1984 Ex. M-6 that K. K. Sarkar was reverted on his substantive post of Store Munshi on his failure to qualify the typing test. Similarly, it is clear from letter dated 26th November, 1982. Ex. M that Gokul Chand, peon was given officiating promotion as Store Munshi on the condition that if K. K. Sarkar is reverted as Store Munshi then he will have to be reverted as peon within 24 hours notice. Thus, Gokul Chand was validly, reverted through letter dated 2nd July, 1984 Ex. M-8.

25. To support the aforesaid plea a reference has been made to the case of State of Bombay *versus* F. A. Abraham, AIR 1962 Supreme Court 794 in which it was held that a person officiating in a post has no right to hold it for all times. When the permanent incumbent comes back the persons officiating is naturally reverted to his original post. This is no reduction in rank for it was the very term on which he was given the officiating post.

26. On the other hand, Gokul Chand appeared in the court and deposed that he was promoted as Store Munshi on 26th November, 1982 and was reverted in July, 1984 despite the fact that he was never issued any warning during the period he served as Store Munshi. On the basis of this statement, it has been submitted that K. K. Sarkar could not be reverted on his failure to qualify typing test. His annual increment could only be withheld as per Haryana Government instructions specially when the Vice-Chairman had specially passed an order in para 7 of letter Ex-W-14 that Haryana Government instructions shall be followed. Resultantly the reversion of Gokul Chand was illegal.

27. The case under consideration is of reversion of Gokul Chand, peon and not that of K. K. Sarkar. Gokul Chand was admittedly given officiating promotion with the condition that he will be reverted in case of reversion of K. K. Sarkar. It has been done accordingly. Apart from this, para 7 of letter Ex-W-14 does not say that the Institute shall follow the instructions of Haryana Government with regard to the appointment of clerks/typists on the condition that they shall pass typing test. So, the plea on behalf of the workmen cannot prevail. Resultantly, it is held that the impugned action of the reversion of Gokul Chand is legal and valid and he is not entitled to any relief.

28. Shri R. P. Arya, authorised representative of the workmen admitted during the course of arguments that the dispute with regard to stoppage of annual increment of Hari Shankar Parshad, Chowkidar does not survive for consideration as the same has been set right by the management.

29. For the reasons recorded above, it is held as under :—

- (i) The workmen who are not given the facility of leave on all Saturdays are not entitled to it.
- (ii) The order of reversion of A. K. Choudhary is illegal & unjustified and he is entitled to promotion to the post Accountant from the date he was reverted and he is entitled to the consequential benefits upto date. The reversion of Gokul Chand is justified.
- (iii) The dispute regarding stoppage of increment of Hari Parshad Chowkidar does not survive for adjudication Issue No. 1 is decided accordingly.

Issue No. 2 and 3 :

30. These two issues have not been pressed during the course of arguments and as such the same decided against the management and in favour of the workmen.

Relief.

31. In view of my findings on various issues it is that the order of reversion of A. K. Choudhary is illegal and unjustified. He is entitled to promotion to the post of Accountant from the date he was reverted with all resultant benefits up-to-date.

The 15th September, 1994

U. B. KHANDUJA,

Presiding Officer,
Industrial Tribunal-II, Faridabad.

Endorsement No. 2993, dated 10th October, 1994

A copy with three spare copies is forwarded to the Commissioner & Secretary to Government Haryana Labour Department, Chandigarh.

U. B. KHANDUJA

Presiding Officer,
Industrial Tribunal-II, Faridabad.

No. 14/13/87-6 Lab. /750.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s President, M. C. Bhiwani *Versus* Ram Chander.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 678 of 90

Date of receipt : 28th February, 89.

Date of decision : 3rd October, 93.

SHRI RAM CHANDER, S/O LILA RAM, VILLAGE DINOD, TEHSIL AND DISTRICT BHIWANI

.. *Applicant*

versus

1. PRESIDENT, MUNICIPAL COMMITTEE, HEAD OFFICE BHIWANI IMPROVEMENT TRUST, BHIWANI
2. CHIEF EXECUTIVE OFFICER, IMPROVEMENT TRUST, BHIWANI .. *Respondent-Management*

Present :

Shri Ghetan Anand, for the workman.

Shri S. S. Gupta, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short 'the Act'), the Governor of Haryana referred the following dispute between Ram Chander and the above mentioned management for adjudication to this Court,—*vide* Labour Deptt. Letter No. BWN/40-89/7947—53, dated 24th February, 1989 :—

Whether services of Ram Chander, were terminated or he lost the lien by absenting himself ? In either event, to what relief is he entitled ?

2. According to the workman, he was appointed as Mali-cum-Chowkidar in Improvement Trust, Bhiwani on daily wages in November, 1981 and he worked as such till 1984-85, whereafter he was removed from the job. He was again appointed in 1987 and again removed from the job. He has claimed that he had completed 240 day's job in the department and he could not be removed except by complying with the provisions of the Act. Demand notice was raised by him on 21st November, 1988 leading to the reference in question and in the demand notice, he prayed for reinstatement with full back wages.

3. The management, in its written statement, pleaded that Ram Chander worked as casual labour on daily wages during the year 1984-85 and stopped coming thereafter. It was further pleaded that the petitioner again worked for some time as labour in 1987 and worked upto 6th September, 1987. According to the management, some surplus employees were retrenched by the management in January, 1983 and Ram Chander was not on the rolls of the management at that time. According to the management, the workman had raised the present dispute after a long time with a view to derive undue benefits.

4. On the pleadings of the parties, the following issue was framed on 13th February, 1990 by the then Presiding Officer, Labour Court, Rohtak :—

(1) As per terms of reference.

5. The parties led evidence in support of their rival claims. I have heard Shri Chetan Anand, authorised representative of the workman and Shri S. S. Gupta, authorised representative of the management and have gone through the case file. My findings on the above issue are as under :--

Issue No. 1 :

6. Ram Chander, appeared as WW-1 and deposed that he was appointed on 2nd November, 1981 as Mali-cum-Chowkidar and he was removed from the job on 6th October, 1987. (This date was corrected by him in cross-examination as 6th September, 1987). He further claimed that no notice was given to him, nor any retrenchment compensation was paid to him. He denied the suggestion that he abandoned the job himself. He, however, admitted that he used to get wages for the days he worked in a particular month. He further admitted that except demand notice, he did not give any application about his illegal termination, though he used to visit management personally in this connection.

7. Satya Pal, Clerk appeared on behalf of the management as MW-1 and he stated that the workman had worked from 1981 to 1985 intermittently and he used to remain absent at intervals during this period. He claimed that the workman then left at his own and he was re-appointed in June, 1987 and he left the job of his own on 6th September, 1987.

8. When the statement made by Ram Chander on oath, is scrutinized with his pleadings contained in claim statement, it would be seen that there is variance with regard to the period of working. While in the claim statement, he has specifically pleaded that he had been removed from the job in 1984-85, but in his statement made by him in this Court he stated on oath that he worked upto 6th September, 1987 when he was removed from the job. In view of this contradiction it can be said that Ram Chander has suppressed the truth when he appeared in the witness box. From the claim statement it stands established that the workman worked upto 1984-85 and then he kept silent and did not raise any demand notice and admittedly, he was re-employed in June, 1987. It, therefore, follows that the workman had left the job himself in 1984-85 and it was obviously because of this reason that he did not raise any finger protesting against his alleged removal. It has also come in evidence that the workman again worked from June, 1987 to 6th September, 1987 and in this way, he can not be said to have completed 240 days job and the provisions of Section 25-F of the Act are not attracted in this case.

9. Even otherwise the demand notice was raised by the workman only on 21st November, 1988 after the management had retrenched some surplus employees in January, 1988 and although Ram Chander has stated that he has been visiting the management for a year before raising demand notice, but this statement of the workman cannot be believed, he not being a reliable witness and the ipse-dixit of the workman, in this regard cannot be accepted. The workman has not satisfactorily explained the delay in raising the demand notice and to my mind, it is a case of abandonment of service by him.

10. In the light of discussion about, I hold that the workman had himself lost lien over the job by absenting himself from the duties and it is a case of abandonment of job by workman himself. The provisions of the Act are not attracted in this case and it can not be said that the services of the workman were terminated, as claimed by him. He is, thus, not entitled to any relief in this case. The reference is answered accordingly, with no order as to costs.

The 3rd October, 1994

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2216, dated the 6th October, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.